

Wednesday, 23rd July, 1947

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CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 23rd July, 1947

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

REPORT ON THE PRINCIPLES OF A MODEL PROVINCIAL CONSTITUTION—*contd.*

Mr. President: We shall take up discussion of Clause 15 of the Provincial Constitution, which was held over the other day. That Clause was moved and amendments were also moved. So the Clause and also the amendments are now open to discussion.

Mr. B.M. Gupte (Bombay: General): Sir, before I proceed to the arguments in support of my amendment, I should like briefly to indicate the difference between my amendment and the original Clause and other amendments. In my amendment I have retained the first two sub-Clauses of the original Clause. Then I should like also to emphasize that the ultimate authority who has to deal with the emergency is the same in both, namely, the President of the Union. The only difference between my amendment and the original Clause is that when an emergency arises the original Clause provides that the Governor shall report to the President of the Union, while I have suggested that the Governor may, if necessary, take immediate action and then report to the President. Pandit Kunzru's amendment, I think, merely reiterates and clarifies the original Clause. Then there remains Mr. Munshi's amendment. Essentially, Mr. Munshi's amendment is not different from mine but it is something more. It is a redraft of the entire Clause as it would stand if modified by my amendment.

Proceeding with the argument. I should like to submit, first of all, that the scheme as provided for by the original Clause cannot work at all. Under sub-clause (I), an onerous responsibility has been thrown on the shoulders of the Governor, namely, the responsibility to prevent any grave menace to the peace and tranquillity of the Province. What is the power given to him to meet such a heavy responsibility? It is the power merely to report to the President of the Union, if at all it can be called a power. Even this power,—when is it to be exercised? Not until and unless the Governor, has tried and failed to persuade his Cabinet to initiate legislation which he considers essential for the purpose of meeting this emergency. My submission is that if a problem lends itself to solution by the protracted processes of legislation, then it is not a grave menace at all. If it is otherwise, *i.e.*, if it is really a grave menace, then some negotiation, some discussion with the Ministry is bound to entail delay which no really grave menace can tolerate. For a grave menace does not come in a leisurely fashion. It is a sudden flare up, a violent eruption. In such circumstances, a mere power of reporting is absolutely of no avail. If the Governor has to discharge his responsibility with some chance of success, he must act immediately and for that purpose, he must have the necessary power. That is what has been provided for in my amendment.

[Mr. B.M. Gupte]

It does not therefore mean that my amendment seeks to give unrestrained, unrestricted power to the Governor. In the first place it is stated that he shall act only when immediate action has to be taken. If no immediate action has to be taken, the Governor cannot act. If there is time to communicate with the President and receive instructions, the Governor shall not act. Why should he take responsibility unnecessarily? If there is not time, he shall take initial action and forthwith communicate it to the President. Of course, I may be told that it is the Governor who has to judge whether immediate action has to be taken. I admit it is the Governor who has to judge. But I submit that if he acts wrongly, there is the President to correct him immediately. If he acts perversely, there is the sword of impeachment, hanging over his head.

Then it is provided that he shall not assume the powers of the High Court. The High Court is the bulwark of civil liberties and its authority must ever remain unimpaired. That is another safeguard. Then, the Governor shall have to communicate his proclamation to the President and he shall abide by his directions later on. It means that it is only for two or three days that this power is given to the Governor. As soon as the President has got seized of the matter, the Governor's power comes to an end. Of course, I have provided that the proclamation is to last for 15 days, at the most. If it does last so long the responsibility will not be that of the Governor, but that of the President. Therefore, it is evident that my amendment is designed merely to enable the Governor to hold the fort till the President takes the situation in his own hand.

Then, I am told that in these days, when distances have shrunk tremendously owing to the telephone, the radio and the aeroplane, it will not be necessary to give this extraordinary power to the Governor, and it is enough merely to report to the President. I submit that the very forces which have caused this shrinkage of distances have also contributed to the intensification of the tempo of life and situations which took some time to develop in the placid old days, develop today with baffling rapidity. This argument therefore does not affect the merits of my case.

There are other more through-going objectors, and from the order paper it is evident that some of them have expressed their opposition by tabling amendments for the deletion of the entire Clause. These gentlemen are not satisfied that there should be any emergency power at all either to the Governor or to the President. I am afraid they forget that we are living in a revolutionary age, we are living in almost perilous times. The whole world has become a seething cauldron of economic unrest and political turmoil. A spirit of violence is abroad. It is only three days ago we witnessed one of the ugliest manifestations of it in Burma. Even in India we share these world conditions, and our own peculiar problems have aggravated them. Horrible tales of arson, murder and loot continue to be our daily fare of news. Nobody has any doubt that a new and a great India is being born. But I submit that the new India cannot quickly grow and prosper to its noble destiny unless we are able to maintain the frame work of well-ordered society through this stormy and critical period of our history. The whole atmosphere is explosive. Nobody knows when and where the situation will explode. It has therefore become imperative that apart from the machinery of the Government, there shall be reserved somewhere power to deal with a serious threat to law and order promptly and efficiently. When immediate action has to be taken, it is obvious that that authority must be a man on the spot. If it is to be the man on the spot, who else can that man be other than the Governor, who is elected on the widest franchise? No doubt, in most cases, the Ministry will be able to weather the storm and practically in no case will this extraordinary power be called into action. We shall all be glad if the power rusts in the Statute Book. But occasions may arise when the Ministry may not be able to act as efficiently and promptly as we expect it to do. For such circumstances, power must be reserved in the hands of the Governor.

We are told that this will be an encroachment on Ministerial responsibility. I ask, if the President, in the interests of law and order, can override the popular Ministry, why not the Governor, who is admittedly the head of the province, is much nearer home, and who also is an elected popular leader?

In conclusion, I say if this power, restricted in its scope and hedged round with safeguards, cannot be trusted even for two or three days to a man who has been elected on a wave of popular enthusiasm, and who enjoys the confidence of the overwhelming mass of the people of the province, then the position of the Governor is reduced to that of a dummy and a costly dummy at that; costly both to himself and to the province. For both of them will have to spend lots of money and energy for the adult franchise election. I hope the House will agree that this is not a satisfactory position for a Governor who has been elected on adult suffrage.

That does not mean that I advocate that power should be given merely for the sake of power or merely for the sake of position and prestige of the Governor. I only say, that there may be an emergency, and it has to be provided for and power has to be given to somebody. There is the Governor elected on adult franchise; he enjoys the confidence of the people. Why should he not have the confidence of the framers of this Constitution? Therefore, I commend my amendment to the acceptance of the House.

The Honourable Pandit Hirday Nath Kunzru (United Provinces: General): Mr. President, I move:

“That for Clause 15 the following be substituted:

Whenever the Governor is satisfied that there is a grave menace to the peace and tranquillity to the province of any part thereof, he may, in his discretion, report to the President of the Federation.”

The three amendments that have been moved relate to the same important subject because law and order are the foundation, not merely of the State but of society. It is not surprising therefore that we should be anxious to include such provisions in the Constitution as would ensure the maintenance of peace and tranquillity. But we have to think carefully regarding the means that we should adopt to achieve this object. I propose to deal only with Mr. Munshi's amendment in this connection, as Mr. Gupte himself has said it was better drafted and more comprehensive than his.

Sir, Mr. Munshi's amendment is practically a reproduction of Section 93 of the Government of India Act, 1935. Before we adopt the method laid down in this Act, we should clearly understand the scheme that is embodied in it. This Act did not confer full responsibility on us. The Ministers, though they occupied an important position, were not masters of the situation in their own provinces. The Governor enjoyed Legislative and administrative authority in important fields. In fact, it would be true to say that so far as the Provincial part of the Constitution was concerned, he occupied a central position. Now, do we desire that the Governor in the new order should be as important a figure as he was till the other day? I do not think, Sir, that there is any reason why we should base our Constitution on that distrust which permeates the Government of India Act, 1935. The British Government were afraid that the Indian Ministers would so use their power as to bring about a deadlock and make the maintenance of the British authority impossible. They therefore imposed checks on the authority of the Ministers. Now, surely, we cannot proceed on the same basis. We must trust our Ministers and they must be the central figures in the Provincial Government.

[Pandit Hirday Nath Kunzru]

Sir, some members may be influenced by the example of America where the States have Governors who have the power to maintain law and order. But in the American States there is no responsible Ministry. Besides, even in those States where the powers of a Governor are limited, he occupies the most important position in the eyes of the people, both in the politics and the Government of the State. He further controls the Militia and the Central Constabulary or the State Police Force, if any. He therefore, occupies a position all his own. We cannot by any means reconcile the Presidential and the Cabinet systems. It seems to me therefore that the very principle on which Mr. Munshi's amendment is based cannot be acceptable to us. The Report of the Provincial Constitution Committee proceeds on a different basis from that on which the British authorities proceeded when they placed the Government of India Bill in 1935 before the British Parliament.

Apart from this, Sir, let-us consider how the Governor could act under the Government of India Act, 1935. He was given adequate powers to enforce his decisions. He could take upon himself all the functions of Government when it could not be carried on in accordance with the provisions of the Act of 1935. He controlled the service too. The All-India Services connected with district administration which were under the control of the Secretary of State were immediately responsible to him for their actions. Again, so far as the Provincial services were concerned, their members had a right to appeal to the Governor. Besides, one of the special responsibilities of the Governor was to protect the rights and interests of the members of the Services. The members of all the Services, whether Imperial or Provincial, were there under the ultimate control of the Governor. Apart from this, no change could be made in the rules relating to the organisation and discipline of the police force without his sanction. His authority over the provincial executive agencies was therefore complete. The Governor under the Constitution as it is likely to be,—I mean a Constitution based on the principles laid down in the Report before us—will not enjoy these powers which will be made over to the Minister. How will he then be able to have his orders carried out? His position will be an exceedingly difficult one. He may be an elected authority but in the case of a conflict between him and the Ministers, the position will be one of great embarrassment both for him and for the Ministers. The difficult position in which Ministers will be placed is obvious. Their prestige will go down in the eyes of the public and the services to the extent that the Governor is able to control the Services, and this will undoubtedly lead to administrative complications. They will be in the same predicament in which they are now *vis-a-vis* the Governor. Sir, we have to consider whether the method that has been suggested of ensuring the maintenance of law and order will be suitable on general grounds for securing the object that we have in view. Is it desirable that we should allow one man to sit in judgement, so to say, over the Ministers? However, wise a Governor may be and by whatever method he may be selected, I submit that it is highly undesirable that his personal view should prevail over the collective view of the Ministers who will be better informed than him. That is another argument and I think a very strong argument for not agreeing to the amendment that has been moved by Mr. Munshi.

Now, Mr. Gupte said—and perhaps Mr. Munshi will say—that the power that has been conferred on the Governor can be exercised by him only in the event of a grave menace to the peace and tranquillity of the Province. Under Section 93 of the Government of India Act, 1935, the Governor can take over the entire Government only when he is satisfied that the Government of the Province cannot be carried on as contemplated by that Act, but it is provided in sub-section (5) of that Section that “the functions of the Governor under this Section shall be exercised by him in his discretion” and that “no

proclamation shall be made by a Governor under this Section without the concurrence of the Governor-General in his discretion". Those who rely on the present Government of India Act should thus realize that whatever the power conferred on the Governor by Section 93 he could take no action without previously consulting the Governor-General. Mr. Munshi's amendment will therefore confer greater power on the Governor than the Act of 1935 does. Now, it may be said that, even if the amendment is passed, it will still be possible for the Governor-General to decide finally whether the Governor's action was justified. I submit, Sir, that the position of the Governor-General will be seriously prejudiced if the Governor takes action of a drastic character without waiting for his decision. If the Governor issues a proclamation assuming all the powers and functions of Government, it is obvious that if the Governor-General disagrees with him he will be forced to resign, but on the other hand, if the Governor-General owing to this consideration, desists from instructing the Governor to withdraw his proclamation he will place himself in a very difficult position. He will be acting against his own judgment and making himself responsible for the consequences of a policy which he disapproves. Mr. Gupte thought that his amendment gave power to the Governor to act on his own initiative for a very short time, and that that was all the difference between his amendment and Clause 15 of the Report. This may seem to be a trifling difference to Mr. Gupte, but to me it seems to be a vital difference. If the Governor-General is really to be in a position to decide what action should be taken. I think it is imperative that the Governor should not be allowed to prejudice the position by over-ruling his Ministers and taking over all authority from them.

I am sensible, Sir, as I have already said, of the fact that this House is very anxious that law and order should not be allowed to break down in any event. The question therefore to be considered is whether we can achieve the end in view without conferring on the Governor the power that would be vested in him if Mr. Munshi's amendment were passed. I have already said that if a Provincial Ministry is to be over-ruled it should not be over-ruled by single man. It should be over-ruled by some authority which would enjoy a more important position in the eyes of the public than the Provincial Ministry. Besides, it is desirable that the collective opinion of the Provincial Ministry should be set aside not by one man but by a body of men who can take into account the circumstances not merely of one Province but of the whole country. We have such an authority in the President and the Federal Government. I submit therefore that such reserve powers as you want to assign to any authority for ensuring the peace and tranquillity of a province should be vested in the Central Government. The Central Government in every country is ultimately responsible for the peace of the country and for every part of it. Since it bears this responsibility, let it be possessed also of the powers required by it to fulfil this responsibility. I submit therefore, Sir, that my amendment is much better than the amendment moved by Mr. Gupte or Mr. Munshi. It is in accordance with the view propounded by Mr. Patel when he moved the consideration of the Report on the Principles of the Provincial Constitution. It achieves all that we want without bringing the Governor and his Ministry into conflict and placing on him a responsibility which he cannot discharge unless the Services are in the last resort made answerable to him. This would be going back to the scheme of the Government of India Act which we have been condemning all these years. I think, Sir, that we are debarred by our principles from accepting the view embodied in this amendment. We must, therefore, adopt the only method permissible in a Constitution which is based on the doctrine of Ministerial responsibility. The solution that I have proposed will not be inconsistent with the principles underlying a Federal Constitution. If my view is accepted, it will only mean that the

[Pandit Hirday Nath Kunzru]

Central Government would occupy a strong position in regard to the maintenance of law and order. This certainly does not militate against responsible government or federal government; and since there is a way, Sir, of ensuring the peace and tranquillity of the country by acting on this principle without infringing the basic ideas that lie at the bottom of responsible government, I venture to command my amendment to the attention of the House.

Shri T. Prakasam (Madras: General): Mr. President, Sir, I heard with great interest and attention the argument of Pandit Kunzru; but I have not been able to follow him when he said that the power should vest with the Centre and that the Governor when he sees any danger to peace must only report to the Centre and take its orders. (*Honourable Members*: “We cannot hear you”). All right.

Apart from the Government of India Act of 1935 or the Act which we are going to pass, it is a matter of mere commonsense that when there is a great danger of a breach of the peace, the man on the spot should have the power to deal with it immediately and should try and prevent it and then report it to the Centre. This is the ordinary commonsense view which is embodied in any statute in any country. And I expect this Constituent Assembly which is a sovereign body, when it is enacting the very first statute, conceding freedom of action and provincial autonomy to the provinces and also establishing freedom for the whole country, taking power away from Great Britain, it will see to it that the law and order does not break down in the very first minute, or in the very first few minutes, and to see that the man on the spot does not have to stand there, looking at the happenings and merely reporting it to the President of the Union Government and trying to get orders from him. I would, submit, Sir, that such a course should not be adopted by this Constituent Assembly. It is against the very elementary principles of doing duty. I do not care, Sir, whether it is the Governor, or whether it is the Minister or whether it is a Police Officer that is in charge of this business. That officer that person on the spot must have the authority to deal with the situation and try to prevent a breach of the peace first. And it is only when the situation goes beyond his power from the very outset or when he is collapsing that he would order for the military or any other source of help from the Centre or from the President of the Union.

Pandit Kunzru was arguing that what was conceded under the Government of India Act of 1935 to the Governor should not be adopted by us here. I was not able to understand him. The Governor under the Government of India Act, 1935, is not the same as the Governor that this Constitution is providing. It is not an Englishman who will be the Governor of a Province. Under this Constitution it is the man who is elected by adult franchise, by the whole Province, who will be the Governor. Having clothed him with such a position and having made him feel that he was the man responsible not to any particular community or section of the Province, but responsible for every one in the Province who elected him to that office, having clothed him with such a position, is it right for any of us to say, “let him be all this, let him be a man elected by all the people, let him be anything, but we should not entrust him with that authority which the Government of India Act, 1935, had given to the Governors”.

Sir, we have been working with the Governors under the Government of India Act, 1935, since 1937. We had to deal with bad situations, very grave situations even during my own short period as Prime Minister. Allow me, Sir, to tell you and the Honourable Members of this House that if the troubles that has overtaken Northern India and other parts of India had not overtaken the South of India, it was not because occasion did not arise for such troubles, but it was because the matters could be dealt with by vigilance

on the spot, without waiting for a single minute for anybody's orders. There was a communal clash threatened, of a very serious type in South India. How was the situation met? Not a single death occurred, though it was a very serious situation. How was that prevented? Our Muslim League friends and all the leaders of the people in the Province were also very good and alert. The moment trouble was sensed, at dead of night they came and knocked at our door and said there was danger. What were we to do? We immediately went to the spot. It was Providence that helped us to prevent blood-shed and death. It was the people, both Muslims and Hindus who saved the situation. Members of both communities formed peace committees and they began to parade the area even before the police or the military could come to the spot. And it was managed so well that nothing happened although the whole of that zone all along the railway line from that point to the northernmost point was most inflammable.

Again, let me point out that, during the worst stage of the famine, food trains could not pass from Madras along the line to a distance of fifteen hundred miles. And it was the police who were entrusted with the duty of managing it. When they knew that the train was to be interrupted by the forces that had been organised for that purpose, they were got ready, and protection was given all along the line for 1500 miles so that the food train could pass and the danger could be averted. How could anyone expect the person in charge of law and order or even the Governor who also was having authority under the Government of India Act of 1935 to report it to the Centre, to the President of the Union Government, and await his orders? Is it not very dangerous that such a thing should be done? I did not expect this proposal to come up in this form. I know when this debate was going on in another place the first attack was upon the post of the Governor himself. That I can understand; if you attack the Governor's appointment itself and eliminate him altogether and make the Ministry responsible, that would be a different matter. But it was not so. I must congratulate the leadership and the Provincial Constitution Committee that had drafted this Provincial Constitution. They have lifted up the whole nation in one stroke and saved, us from the troubles that had overtaken us till now by reviving adult suffrage. Adult suffrage is not a new thing, as imagined by some of our friends, handed down to us by Great Britain. Adult suffrage you will find inscribed on the stone walls of a temple in the village of Uttaramerur twenty miles from Conjeeveram,—the whole structure of democracy of those days just a thousand years ago,—many of us imagine that it is Great Britain that has given us the democratic process of election; that is not so. You will find on the stone walls of that temple written in the Tamil language an inscription to the effect that there was democratic election carried on then on the basis of adult suffrage a thousand years ago. There was adult suffrage as stated there. There were no wooden boxes which could be used as ballot boxes, but cadjan leaves were used as ballot papers and pots as ballot boxes. That is the way in which they carried on the administration of the country, even in the villages; and it is the misfortune of this country that we have fallen on evil days and came under the rule of different kings. All our ancient things disappeared and we have become slaves, as it were, and whatever has come to us, we imagine as having come from Great Britain. Having revived adult suffrage, having clothed the Governor under that suffrage with a unique position—I am glad it was not copied from the American or Australian or Canadian or any other Constitution—this Committee and this leadership had the vision to see the position of the country at present. How are we to manage matters now? I was an advocate of the British system of democracy and the same was the feeling of some of those friends who have tabled these amendments. I was very anxious that the British system should be copied by us. It was copied by us and we have gone through all kinds of experiences. Our leaders have gone through all kinds of experiences and having regard to all our conditions and sufferings they have suggested this device of an elected Governor on adult suffrage by which they have lifted the nation in one stroke to the skies, because they have made everyone in this country

[Shri T. Prakasam]

feel, man and woman, for whom the Congress had been fighting all these years, that at last it is their Government, that they are appointing their Governor, the man who will be responsible to them. The Governor should have power to do something. If something is going on in the presence of the Governor, is he not to interrupt it and prevent it on the spot when it lies in his power? To suggest that nothing should be done and the Governor should not be made to exercise the power of Governor of the 1935 Act is not sound and correct. Anything good may be taken even from the Constitution of 1935. Everybody must accept the proposal without a single word of demur in this matter. I am very sorry that this retrograde step has been proposed that the whole thing should be postponed until the Union President sends reinforcements or advice or gives directions. I earnestly request the House not to accept any such suggestion. We would make the whole world laugh at us if we say that without meeting a situation on the spot he must come to this place. We will be making fools of ourselves if we adopt this amendment.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Sir, the motion before the House raises a vital issue and I would request the House very carefully to consider the pros and cons with meticulous care before they come to any decision. Sir, coming from an unfortunate part of this country where the breakdown of the machinery of law and order and the non-intervention of the administrative head in the matter has been causing tremendous bloodshed and incalculable suffering and hardship, I feel called upon to put in a few words in support of the amendment moved by my Honourable friend Mr. Munshi. What does this amendment seek to achieve? It proposes certain extraordinary powers for the Provincial Governors to be exercised by them in their discretion in very emergent circumstances. The House will note carefully that these powers do not form part of the ordinary routine work of the Governor; it is not part of his normal duty as Governor, but these powers are to be exercised by him only in emergent circumstances, if circumstances so demand that swift action is essential for preventing a total collapse of the machinery of law and order and even for restoring the machinery of law and order if it has already been thrown out of gear. I ask every member of this House whether he really wants to deprive the administrative head of a power like that to be exercised by him only in emergent circumstances. I quite appreciate the good point made by my Honourable friend Pandit Kunzru but one may respectfully differ from him. I want to point out to him that I have no very strong criticism to make against Section 93 of the Government of India Act, 1935. In my view that Section embodies certain very valuable provisions. Our only grievance is that the provisions of Section 93 have more often than not been abused and not properly used. After all is said and done even best Constitution in the world may not be of any use to the people if the people have not the determination and understanding and good will to work it in the spirit in which it is conceived. Who, after all, is the Governor that will be appointed hereafter under the new Constitution? He is not going to be a foreign Governor. He is going to be an Indian. He is not going to be a nominated person. He is going to be elected on universal adult suffrage and as such he will command the respect and confidence of the people. He will have tremendous prestige behind him. Now, after choosing a person like that for that office, do you propose to keep him in the Government House as a dummy or do you want him to do some work for you when circumstances demand swift and immediate action? There are occasions when he will have to act quickly I quite understand that there is possibility of this power being abused. But let me tell you that this fear is more imaginary than real. The occasions on which he may be called upon to exercise this power would be very rare. What are the objections against this amendment? It is said that the Governor will not have any power over the administrative officers and therefore his intervention would be ineffective.

Now I ask my Honourable friend Mr. Kunzru whether the Union President will have absolute power over the administrative machinery of the Provinces. So in the ultimate analysis the Provincial authority in such cases will not be divorced from that of the head of the Union. There are two checks provided. In the first place the Provincial Governor will be called upon to act immediately and simultaneously report to the Union President the causes which led him to take some particular action. Now, is it expected that a Governor who is elected and entrusted with very grave responsibility, who is liable to be arraigned and impeached if he acts in contravention of the Constitution, will act in an arbitrary and thoughtless manner? I do not believe he will. I believe on the other hand he will act correctly and effectively.

Further, at the most this emergent action will be only a question of a couple of weeks. From the provision it is clear that the proclamation will cease to operate at the expiration of two weeks unless ordered by the Governor himself or the President of the Union. So, unless he finds that the Ministry is divided and there is breakdown of law and order and that the position would deteriorate if prompt action is not taken he will not step in; and when he does he will forthwith report to the Union President who is armed with extraordinary powers. For these reasons I think there should be some provision in the Constitution by which the ultimate responsibility for the maintenance of law and order and responsibility for preventing the breakdown of the administration should be broadly and squarely laid on the shoulders of some person and that person should be the Governor. That function must be entrusted to him for the limited purpose. Sir, I support this amendment.

Mr. President: Before I call upon any other speaker, I desire to say that we have only six days now between today and the 31st of this month and the whole of the Union Constitution has to be got through. I would therefore request the speakers to limit the duration of their speeches so that more members can participate in the discussion. I have half a dozen names with me of members who wish to speak. (An Honourable Member: *"I move for closure"*). There are also other members rising in their places. I will call upon members to speak in the order of their names in my list.

Shri K. Santhanam (Madras: General): Is it necessary Sir, to send up names to you for an opportunity to speak? Could not the members catch your eye?

Mr. M.S. Aney (Deccan and Madras States Group): Is it not enough if the members rise in their places and thus catch the eye of the President if they want to speak?

Mr. President: It is not necessary that the names of members should reach me if they wish to speak. But if any member has sent his name and rises in his place, he will naturally catch my eye first. I shall not go according to the list as it is and would call on members who catch my eye. I would request members to limit the duration of their speeches to five minutes each.

The Honourable Mr. B.G. Kher (Bombay: General): Mr. President, I do not propose to take even five minutes, I rise because the matter is of such importance.....

B. Pocker Sahib Bahadur (Madras: Muslim): On a point of order, Sir, I would like to know whether it is not necessary that all members who have given notice of amendments should speak first so that all the amendments may be discussed together?

Mr. President: So far as this Clause is concerned, all the amendments have been moved and the amendments and the Clause are for discussion.

B. Pocker Sahib Bahadur: I have given notice of an amendment to this amendment. I request you to allow me to speak at this stage. It may perhaps be taken as moved.

The Honourable Sardar Vallabhbhai Patel (Bombay: General): It could not be taken as moved now. So many members have already offered their remarks. As he has not moved it up now, nothing can be done now.

Mr. President: So many have spoken already and the Member did not move his amendment earlier. His amendment was received on the 21st July. On that very day all the other amendments were moved. If the Member had any intention of moving his amendment he could have called my attention to it then.

The Honourable Mr. B.G. Kher: Mr. President, Sir, I rise to oppose the amendment moved by the Honourable Pandit Hirday Nath Kunzru. As I said Sir, I would not have intervened in this debate had I not felt that the amendment moved by the Honourable Mr. Kunzru was of such a nature that it was the duty of everybody to oppose it. I submit that it has only to be read to show how futile it is. What it reads is this:

“Whenever the Governor is satisfied that there is a grave menace to the peace and tranquility of the Province or any part thereof, he may, in his discretion, report to the President of the Federation.”

The Honourable Pandit Hirday Nath Kunzru: It is the same as the amendment proposed to be moved by Pandit Govind Ballabh Pant.

The Honourable Mr. B.G. Kher: Then two of you will have to be blamed instead of one.

Now, I do not know if there is a clause like this in the Burmese Constitution, if there is any such Constitution, but I shudder to think what would have happened if what has happened in Burma were to happen under this Constitution. Here is a person elected on adult franchise getting more allegiance from the people than even the Prime Minister. All that he can do is to send a telegram to the President of the Union and await results. Then, Sir, it is a pity that the Honourable Member does not provide as part of his amendment what the Governor has to do if the telegraph or the telephone communication is cut off. Whenever an emergency takes place,—and I have seen, Sir, that even at a short distance of about 15 miles from Bombay it was not possible for people to get into communication with the Governor, or the Prime Minister or any other authorities for less than 20 hours,—what is the Governor supposed to do? He is to report to the President. Therefore even in these days of modern communication, if all that a Governor elected on adult franchise has to do is to send a report to the President of the Union and watch the results, I shudder to think what the consequences will be. I therefore oppose the amendment which, if accepted, will do the greatest harm.

Apart from that, experience has shown, as previous speakers have pointed out, that in a country where those who are in power are subject to party politics. It is necessary to have somebody who will be above intrigues, above party turmoils and who will be able to secure the safety of the people, what we are trying to do is to provide that the Governor should shoulder the responsibility and then should communicate the gravity of the situation to the President of the Union who is assisted by his Cabinet and that the President will either confirm the action of the Governor or differ from the action taken by him. If you have a Governor elected on adult franchise, do not make him only a figurehead, simply sending telegrams to the President of the Union. I oppose the amendment that has been moved by Pandit Kunzru.

B. Pocker Sahib Bahadur: On a point of order, Mr. President. I gave notice of an amendment to the amendment of Mr. Munshi. I was under the impression and rightly so that it is the duty of the President to call upon persons who had given notice of amendments to move those amendments. I did not think that it was necessary to stand up and ask for permission to move my amendment. I was not asked to move my amendment on the 21st. Only Mr. Munshi's amendment was moved and further discussion was adjourned. I therefore request that I may be allowed to move my amendment.

The Honourable Sardar Vallabhbhai Patel: When the President has given a ruling on a point of order, can the same point be raised again?

Mr. President: When a ruling has been given by the President the same point cannot be raised again. In this case, before we closed the discussion, I made it clear that all the amendments had been moved. At that time the Honourable Member did not draw my attention to the fact that his amendment had not been moved. I am afraid I cannot allow him to move at as this stage.

Dr. P. K. Sen (Bihar: General): Mr. President, Sir, I will conform to the whole some time-limit which you have fixed, and I shall be as brief as I possibly can. The question before the House involves some fundamental principles. Frankly, my views are strongly in favour of the amendments tabled in the names of my Honourable friends Mr. Munshi and Mr. Gupte. Whatever may be my view, I am quite prepared to subordinate them because I know that the wisdom and sagacity of this House will choose the right course. Let there be no illusions. First of all, it is an emergency measure and an emergency does not happen everyday. An emergency is an emergency, it cannot be defined, it cannot be described in all its features. It appears to come in upon us suddenly but in fact it comes by insidious stages, and the amendment contemplates that the Governor should be a man of insight and foresight, firmness and promptitude who will understand and know at what stage he should step in and stop the rot. That I understand is the conception of the Governor that we had in mind when we decided upon electing him on adult franchise. What we wanted to secure was that he should be the people's man and should have the whole province behind him, every man and woman should we thought, come to the polling booth having in mind the sort of men he or she is voting for, the man who will have the power and initiative to do the right thing at the right moment. It is impossible to imagine that the Governor should wilfully try to override the ministry. It is accepted on all hands, since we have adopted the parliamentary form of Government, that the ultimate executive authority resides in the Council of Ministers headed by the Prime Minister. When the Prime Minister is working in perfect unison and harmony with the other Ministers, when there is no wheel clogging other wheels when all the wheels lubricated by mutual understanding and goodwill run smoothly it is then that this democratic form of Government fulfils its proper functions. But it is apprehended there may be a sudden emergency which may not be within the power of the Ministry to cope with. It may be that there are factions, disagreements, disunion among the parties. Every form of party Government is subject to these disadvantages. In case there is such a position in case we find that every wheel, instead of helping the other wheels to do their work clogs the rest, preventing the State machinery from running smoothly and further when there is danger ahead to cope with, it is only then that, as the amendment contemplates, the Governor should be in a position to take all powers in his own hands and having taken necessary action, immediately report to the President of the union so that the President in his discretion may then do the needful. This is the whole extent of the emergency powers to be vested in the Governor. The question therefore arises "Can we be confident that this democratic form of Government, this parliamentary form of Government, will always run so perfect that there will be no occasion for any such emergency powers?"

[Dr. P.K. Sen]

In case we are so confident, it follows that there will be no occasion for the Governor to exercise these powers. But again, I ask can we be so confident? Have we had such a long experience of this form of Government that we feel that it can never be necessary for anybody to go over the head of the Prime Minister or the Council of Ministers and to take the initiative in his own hands? The fact is, there is a dread of what is called 'one-man rule'—and it is this dread that accounts for the strong opposition to the amendment. Not even for 24 hours, it is said, can we tolerate 'one-man rule'. It is against the fundamental principles of democracy. But it seems to be forgotten that it is when the democratic machine break down, or is incapable of coping with the situation, that the amendment contemplates vesting the man whom we have elected by adult franchise of the whole province and who undoubtedly enjoys our confidence, with limited emergency powers. Without such powers the Governor of a province would be a mere figure-head. The Governor that is contemplated in the section where his election is provided for is a Governor who can handle an emergent situation, and it is for that reason, I take it that the election on adult franchise was decided upon. I am quite prepared, as I have said to subordinate my own view but I do hope that we shall be under no illusions to the effect that we are subjecting ourselves to one-man rule even for a short time. It is an emergency measure and it is only justifiable as an emergency measure and on that ground, I do submit that this amendment should be accepted and passed.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General): Mr. President, I am really sorry that I have to speak on this Resolution, I had no intention of doing so, not because I have no opinions, but because I do not ordinarily like to challenge publicly the views, expressed by my esteemed colleagues. But, unfortunately for me, Pandit Kunzru blurted out that the amendment which he had moved had originally appeared in my name, which is a fact and which I cannot deny and Mr. Kher then said he had to couple my name with Kunzru's as the two fools who had joined together in giving notice of such a motion.

The Honourable Mr. B.G. Kher: I did not say so.

The Honourable Pandit Govind Ballabh Pant: You did not in so many words.

I am glad that he now realises that what he said was not what he meant and I am not sorry. But all the same while I am bound by the decision of the Party and have to support Mr. Munshi's amendment, I think I must give my reason why I had the temerity and the presumption to give notice of this amendment.

Mr. President: May I point out that the House is not concerned with any decision of any Party?

The Honourable Pandit Govind Ballabh Pant: I have no objection to that, but still I feel that Members should be guided by the collective wisdom of many than by their own individual intelligence. At least I am prepared to merge my own in that of the bigger group. But still I have to tender my explanation for my attitude and the reasons which weighed with me then. The point is this. If there is a grave menace to peace and tranquillity, then how is such a delicate situation to be handled and by whom? Now you have to take into account the scheme of the Constitution which we have already accepted. I fully realize that we have agreed that the Governor will be elected by adult suffrage but by adopting that method of election we do not convert him into a *Sahasrabahu*. He will still have not more than two hands and two eyes. The question is what will be the agency and under whom will the services be functioning. If it is considered that the Governor, being elected by the adult suffrage, should have control over the executive in the day-to-day

administration, I can understand his ability to handle a delicate situation, but to keep the Governor aloof from the entire sphere of administration and then to ask him to put in the most delicate moment when those in charge of the administration are supposed not to be quite equal to it, is to create chaos and to make confusion worse confounded. One can understand the Governor being in charge throughout and thus being in a position to handle a delicate situation. But to keep a man out of water and when there are storms to ask him to keep the boat sailing is to court disaster. That can never work, that is my apprehension.

The Governor has no power ordinarily and even now the Governor is to be no more than a reporter except for two weeks. How is that poor man during these two weeks to acquire all that capacity, that intelligence and that knowledge, which he does not normally possess? The system of democratic Government means Government by the people through their elected representatives. Now what is really the position which you are contemplating? It is this; the Governor does not agree with his Ministers. He cannot persuade the Legislature to agree with him and to accept his point of view. It is always open to the Governor to go to the Legislature to address them and to tell them that a delicate situation had arisen, that the Ministry had unfortunately not been able to take the correct decision and that it was time for the Legislature to revise its attitude towards the administration and those in charge of it if the Governor fails to convince the Legislature, and if he fails to convince the Cabinet which consists of not one or two, but I think of a number between 15 and 20 he will be still empowered to override the unanimous opinion of 400 members of the Lower House, the 60 members of the Upper House and the 20 representatives of the Legislature included in the Cabinet. When there is a grave and delicate situation and when there is no agency under him, how can that poor man shoulder such a burden? That is the issue that you have plainly to face: and I say if it were only this much and no more, I would not have given notice of that amendment, but the thing is that it also tends to impair the integrity of the services, it introduces an element which upsets the psychological basis on which democracy stands, it asks people to look for protection to a man who has no power to protect them. It asks the services to be prepared for a contingency which will never arise and in which they will have to carry out the order of somebody other than the Ministers. It is fraught with grave danger. I may also disclose for the edification of Mr. Kher if he is not already aware of it, that it is not Mr. Kunzru or myself alone who happen to hold this opinion. This question was considered at very great length. I had an opportunity of placing my point of view before the joint meeting of the Provincial Constitution Committee and the Central Constitution Committee and it was accepted by both that the Governor should not be clothed with such authority as is now suggested in the amendment moved by Mr. Munshi. The matter was considered by the Provincial Constitution Committee and they also finally accepted the view that the Governor cannot possibly discharge such a heavy responsibility. While I am sorry for having lost company with Mr. Kher, I have found compensation in many others who were associated with me in these Committees. So the loss, though regrettable, is no irreparable.

Mr. Kher enquired if wires are cut, if the Ministers are assassinated, what will happen? I saw such a contingency will never happen. I will never allow my Ministers to be assassinated. So long as I am the Prime Minister, nobody will be allowed to assassinate the Ministers. If I cannot discharge that duty, I will step out. If the Prime Minister cannot defend himself and his Ministers, it is time for him to step out and make room for somebody else, for some other sturdier Prime Minister to come and take his place. He asked what will happen if wires are cut. I will see that no wires are cut.

He asked what will happen if all the Ministers are assassinated. I ask what will happen if the solitary Governor, who has to report, who has to save the wires, who has

[Pandit Govind Ballabh Pant]

to keep the road free for the passers by, is killed? People forget that even if the Governor is killed, even if the Prime Minister is killed, there is the House there is the Legislature and it steps in and takes all the steps necessary in order to safeguard peace and tranquillity. The amendment that has been moved is neither, if I may say so, fish nor fowl nor good red herring. But it has still the odour of rotten fish. I am not free to utter these words. You have to swallow the rotten fish.

Now, Sir, you have to look at the scheme of the Act from which this Section 93 is being copied. Under this Act, the control of the services is essentially vested in the Governor. The Secretary of State's Services are under the control of the Governor. They look to him for protection and for promotion. As you may be aware, you cannot transfer a Secretary of State's Service man from one place to another under the 1935 Act without the approval and consent of the Governor, with the result that he is the man who is really in charge of the executive and he is the man who is responsible for having created the emergency. In spite of his being in complete control of the services, he allows the situation to develop in such a way. He must face the music for which he is mainly responsible. But while under this 1935 Act the Governor is not altogether free to adopt such an attitude himself, and he has to obtain the consent of the Governor-General, and the Governor-General in his turn is answerable to Parliament, here the Governor is responsible to nobody. There is no House which can call him to account for having committed a grievous blunder in a very delicate situation. I shudder to think of this amendment. In a very delicate situation when the Ministry should be free to handle things in the best manner possible the Governor may meddle and prevent the Ministers from handling the situation in a sound, proper and fair way. In a very delicate situation just when the Ministry should have a free hand, the Ministry will be fettered with the result that a crisis will develop even where a crisis could have been avoided. This is my apprehension.

I am afraid. I have taken too much time. There is a lot to be said. With the little experience that I have got in this line, I can give you many illustrations. I still feel that the amendment of which I gave notice was not unsound.

The Honourable Mr. B.G. Kher: On a word of personal explanation Sir. I only want to say that I did not mean to give any offence to Pandit Pant and I am not aware of having said anything to hurt his feelings. Mr. Pant has taken it very personally

The Honourable Pandit Govind Ballabh Pant: No, no. Not at all.

The Honourable Mr. B.G. Kher: It was only in debate.

The Honourable Mr. Hussain Imam (Bihar: Muslim): Mr. President, after the illuminating speech of Pandit Pant, my task has been eased a great deal. I hold the same opinion that Pandit Pant holds and Pandit Kunzru has expressed. I feel that this amendment has been ill-conceived, that it is undemocratic and that it is not based on sound logic, and is actuated, perhaps by some ulterior motive. I am sorry to use this word; but I take my cue from the joking remark of an ex-Congress man, a colleague of mine in the Central Legislature who said that perhaps it might have been aimed at demobilising the leftist element if ever it should get control of the Provincial Ministry. As I said, this was a joking remark.

My whole opposition is based on two factors. In the first place, in every constitution which I have looked through, where the Ministry is responsible to the Legislature, there is no provision of this nature that the Governor can take over the governance in his own

hands. He can dismiss the Ministry and call for another if he feels that the Ministry has lost the confidence of the House.

He can, if he finds that the House is not behaving properly, dissolve the House but this motion is the strange innovation which was created by the British Government in the peculiar circumstances of India to have a Section 93 which is being perpetuated. The circumstances, as Pandit Pant has pointed out, were different. The Governor there was really a party. He had certain interests which were adverse to those of the Ministry and it was essential for him to be armed with certain powers, Ordinary laws are suspended more often than is realized. There are different methods of suspension, different degrees of suspension. For instance, you have Section 144 suspending the liberty of personal association. You have, if there is a grave financial crisis, a moratorium where the ordinary laws of limitation are stopped. If you have a grave menace to the peace of the country, there is Martial Law where for a certain time you establish military rule. So the degree of suspension differs in different occasions. Secondly, I fail to realize how this omnipotent person known as the Governor can, within the short space of 14 days, change over the whole face of the Province where the Ministers who had been working for years together were not able to do it. What is the special agency and authority which he will use which is not available to the Ministers? He can, even in the existence of a Ministry, pass an Ordinance. He can even in the presence of the Ministers with the concurrence of the Ministry, establish Martial Law. But without doing any such Act, merely by assuming power to himself he will be publishing to the world that 'Now I have suspended the villains of the peace who were merely existing as a sort of stop-gap and instigators'. The meaning of this section is indicated by the following wording:

"It is not possible to carry out the Government of the Province with the advice of his Ministers."

So what it means in reality is that the danger to the peace and tranquillity is brought about at the instigation of the Ministers. Merely by the suspension you generate such an atomic power that peace and calm prevails. But after 14 days what will happen? Will the same bad lot who were regarded as responsible for all this danger to the peace, be brought back. In that case what will be their prestige and what will be their position? With what face can they ask their subordinates to carry out their orders when the subordinates know that their orders are to be carried only as long as the Governor is not invoking his special powers? There is no provision that this power of suspension will not be utilized times out of number. It is once suspended; after two weeks the Governor allows the constitution to prevail but the next day again he suspends the constitution and this process of limitation can be repeated *ad nauseam* without any restraint. In fact, the position of the constitution in the Province in which this power is utilized will become so that I feel that it is the Ministers who should be protected. I, as you know, am not a champion of any executive authority. This may in the end turn out to be the establishment of an autocratic rule if it is sanctioned by the President of the Union. If the President of the Union feels that in a Province a Ministry has come into power which is not acceptable to the Union Executives, then that Ministry will not function and cannot function. I looked into the Union Constitution to find a counterpart for the use of his power by the President. I regret to say that in the Union Constitution too no provision has so far been made. Probably when the motion is moved, a like amendment will be placed therein giving the President autocratic power to carry out the Section 93 Government which had been rightly hated throughout India by all sections of the people. I for one, do not hold a brief either for the Governor or for the Ministry. I have had, during this short period that the Constitution has been in working order, many occasions to differ with the Ministers. I have had occasion to differ with the method in which the Section 93

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Government was carried on. But I feel with all its defects, the ministerial method is a democratic method and Section 93 helps autocracy and it may at some date lead to the establishment of a regime in the province which may not be acceptable to the people. Sir, I therefore oppose the motion of Mr. Munshi.

Prof. N.G. Ranga (Madras: General): Mr. President, Sir, I am very vehemently opposed to the point of view placed before this House by the two previous speakers. It is exceedingly difficult to understand how one of my own leaders who has had experience of running the Ministries should have so completely ignored the very recent experience of Burma. Let us bring back to our mind what has happened there. Supposing any such mishap happens here in India, and half a dozen Ministers including the Prime Minister are done away with, who is there to be in that Province to straightaway make a report to the Federal President and invoke his aid? Not anyone of the Federal Union Ministers? and the Central or Federal President cannot very well immediately charter a special plane and run down to Madras or even Lucknow and then help these people who are helpless by invoking the aid of the Federal and Provincial triops. It is extraordinary that experienced people should come here and seriously place before us views in diffance of the actual experience that is going on in our own place.

Think again, Sir, of the possibility, not of the kind of Congress party that we have today, having overwhelming majorities in the various Provincial Legislatures but the possibility of a number of competing political parties coming into the Legislatures and Coalition Ministries only becoming possible as a result of a sort of grouping of a number of groups and parties and the Prime Minister being only a little more than a sort of a figure head; then are we to understand at that stage a man of the stature of Pandit Pant will then suddenly come to incarnate as Prime Minister and go to the Governor and say 'I do not want your interference. I will be able to look after myself'? Even a man of the stature of Pandit Pant, Sir, will not be able; under those circumstances being the Head of a Caolition Government, to look after himself. There will be occasions, when the Prime Minister himself or at least some of the Ministers will surely go to the Governors and request him to invoke his special power in order to save them in spite of their own Ministry, and to save them from some hooligans or *goondas* or organized bandits in the country.

Some such reserve power has got to be placed in the hands of the Governor but who is this Governor? Another friend comes and tells us 'Do not make him an autocrat'. What does he mean by autocracy? Does he mean that a Governor who has been selected by adult franchise is to be considered as an autocrat? Well, he may also become an autocrat. So many people who had been elected by adult franchise also became autocrats. Quite true. That is why we have already provided the power for the Legislatures to impeach a Governor if he were to exceed his powers. If he were to misbehave himself, as long as you have got a reserve power there in the possession of the Legislature itself, why on earth should we be afraid of the Governor either becoming an autocrat or treating his Ministers as if they were his chaprasis?

Then, there is the other point raised by Mr. Pant. He asked "what sort of experience can this Governor possibly have? Here are his Ministers dealing with day-to-day administration, who have been accustomed to take decisions on responsible occasions, whereas this man sitting as a sort of body knows nothing. When a grave crisis comes we are asked to invoke his aid. How would it be possible for him to come to a right decision?" May I remind him that it is his duty, strong as he is as Premier in his Province, and the duty of his other Ministers to keep the Governor in daily touch with the

administration? It will be the duty of the Governor to become experienced and he would be a fool indeed if he does not grow experienced by the advice that is being given by his Ministers and Prime Ministers like Pandit Govind Ballabh Pant. Therefore, Sir, the Governor will be an experienced person. He has got to be an experienced person, a trustworthy person and a man with a sense of responsibility if he were to be able to commend himself to this adult suffrage and get himself elected in the first instance. Secondly, after his election he is being advised not only by the Prime Minister but also by his Ministers. He has got a right to be present at their Cabinet meetings; he has got also to be advised by all of them collectively and in the light of all this experience that he gains it would be possible for him to judge at the right moment whether an emergency has actually arisen at all, and if it does arise, he must possess the necessary emergency powers.

Another question has been put to us. "What powers has this Governor got? Whom has got under him to order about?" Just now, my friend Mr. Hussain Imam told us that if you were to clothe him with all these powers, the Civil Services would only look to him and not to the Ministers for allegiance. Exactly so. The Civil Services will learn to look both to the Ministry as well as the Governor. Always the Governor represents the whole Ministry. So the Civil Services as well as the Reserve Forces and Police Forces will learn to obey the Governor also. The Ministers may be powerless or irresponsible for the time being. Then, what would happen to these Ministers, our friend has asked, if in a crisis they found themselves completely unequal to meet it and, therefore, they allow the Governor to have these emergency powers?

Very well then, after the emergency is over, if the Ministers are found to be absolutely useless by the majority of the members of their own Legislature, they will have to make place for another ministry. If however, the Legislature has confidence in them and they are able to carry on, let them carry on the administration. If, on the other hand, the Legislature as well as the Ministers come to the conclusion that the Governor has misused his powers and created an emergency, then it would be within their right to move for the impeachment of this Governor. When you have provided for all these safeguards, I cannot understand how my leader Pandit Govind Ballabh Pant comes here and places before us these untenable arguments against this very wholesome amendment.

Sir, one more point and I have done. Let us remember that this Governor is to be elected by adult suffrage. Let us remember that this man is to be there continuously for five years whereas his Ministry may last for three months, or four months or six months. Let us not forget the recent experience in Madras. We must clothe this permanently placed man with as much power as we possibly can so that there may be some stability, some continuity, some security for the masses of the people for the safeguarding of their civil liberties.

Lastly, Sir,—and this is my conclusion,—I am speaking here as one of the Leftists in this country. I have been a Leftist ever since I started my political career. I am afraid I have not the Ministerial experience of my friend Pandit Govind Ballabh Pant and may be it is because of that that I am still able to speak in the name of all the Leftists. All the Leftists will consider this thing to be one of the safeguard against any kind of hooliganism, or organised banditry as recently occurred in Burma, which we want to prevent in our own country.

Mr. Shankar Dattaraya Deo (Bombay: General): I move closure, Sir.

Mr. President: Closure has been moved. The question is.

That the question be now put.

The Motion was adopted.

Mr. President: The Mover may reply.

Mr. M. S. Aney: Mr. Munshi never spoke on his own amendment.

Mr. K. M. Munshi (Bombay: General): May I speak?

The Honourable Mr. Jaipal Singh (Bihar: General): On a point of order Sir. Mr. Munshi when he moved his amendment the other day told that he would reserve his observations for today, as also did Mr. Gupte. I think we must give him an opportunity to speak.

An Honourable Member: If he has not spoken, it is not our fault.

Seth Govinddas (C. P. & Berar: General): On a point of order, Sir, The House has accepted closure and now only the Mover can speak. If Mr. Munshi did not want to make any remarks, why should we ask him to do so?

Mr. K.M. Munshi: I am not very keen to speak.

Mr. President: I think Seth Govinddas has raised a correct point of order. The Mover of the Resolution will now speak.

The honourable Sardar Vallabhbhai Patel: Sir, in effect, there are two amendments to the Motion that has been moved by me. One is by Pandit Hirday Nath Kunzru and the other by Mr. Gupte, who accepts the amendment of Mr. Munshi. In fact, Mr. Munshi's amendment is an improvement of language on Mr. Gupte's amendment. In substance both are the same. Now, as I have already mentioned in my introductory remarks when I moved this Motion, this is a very controversial matter. There are two points of view. There is no doubt that an encroachment of this kind on the powers of the Ministry is bound to be resented and is bound to create difficulties also, and in a democratic constitution it does not fit in properly. Therefore, I can fully appreciate the objection, and the force with which the objection has been put, by our distinguished Prime Minister, Pandit Govind Vallabhbhai Pant.

On the other side, there are other Prime Ministers and others who have experience of working the constitution. They equally feel that in the present conditions of the country it is a dangerous thing not to provide for emergency of such a nature as is mentioned or as is contemplated in the amendment of Mr. Gupte, namely when there is a complete breakdown of the machinery of law and order and if any such event as the recent unfortunate incident in Burma takes place or a similar tragedy of such a nature arises, or, as we have seen incidents like the recent unfortunate ones in our own country in some provinces take place,—if such a situation arises, it would not be enough for a machinery in the province to report to the Centre but there should be something more effective. We should have something else so that the law and order machine could function without waiting for a moment. Otherwise, there are dangerous consequences likely to follow.

These are the two points of view, and as Pandit Pant has said, there is much to be said on his behalf, and equally, there is much to be said on the other side also. Common mortals have to follow the path of collective wisdom and take the opinion of people who have experience. The weight of opinion as it appears from the debate here is that we must have some sort of provision as is contemplated in the amendment

It do not propose to take up the time of the House any more, because there has been considerable debate and the *pros* and *cons* have been discussed thoroughly. Both those who argue in favour of and those who argue against have only one thing in their minds—what should be in the new constitution for the good of the country—that is the only point

of view that they have in mind. We have all to learn by experience. We have never maintained that we cannot improve or modify this constitution, if by experience we find that there are difficulties in its working. As I have already said, it is the spirit in which the constitution is worked that matter. There is no reason to suppose that our President, or the Governors elected by universal adult franchise will be engaged in conflicts with the Ministry. But even if any such unfortunate event take place, we have the power to open the matter again. We are free to do so. We do not have to go to the British Parliament or look to any outside authority to improve the Constitution. I, therefore propose to accept the amendment of Mr. Gupte, as amended by the amendment of Mr. Munshi.

Mr. President: I will put Pandit Kunzru's amendment first:

'That for clause 16, the following be substituted:

'Whenever the Governor is satisfied that there is a grave menace to the peace and tranquillity of the Province or any part thereof he may, in his discretion, report to the President of the Federation.'

The amendment was negatived.

Mr. President: Then I shall put Mr. Munshi's amendment, which is the amendment of Mr. Gupte, since Mr. Gupte has accepted Mr. Munshi's amendment.

That for amendment No. 8 in Supplementary List of Amendments, dated 16th July 1947, by Shri B. M. Gupte, the following be substituted:

"(1) Where the Governor of a Province is satisfied in his discretion that a grave situation has arisen which threatens the peace and tranquillity of the Province and that it is not possible to carry on the Government of the Province with the advice of his Minister in accordance with the provisions of Section 9 he may, by Proclamation, assume to himself all or any of the functions of Government and all or any of the powers vested in or exercisable by any Provincial body or authority: and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend either in whole or in part, the operation of any provision of this Act relating to High Courts.

- (2) The Proclamation shall be forthwith communicated by the Governor to the President of the Union, who may thereupon take such action as he considers appropriate under his emergency powers.
- (3) The Proclamation shall cease to operate at the expiration of two weeks, unless revoked earlier by the Governor himself or by the President of the Union.

The amendment was adopted.

Mr. President: The Resolution, as amended, becomes the substantive proposition and I put it to vote.

Clause 15, as amended, was adopted.

REPORT ON THE UNION CONSTITUTION

Mr. President: We shall now take up the discussion of the Union Constitution Report. The first Clause of Part IV was moved by Pandit Jawaharlal Nehru. We are now to take up the amendments to that clause. I have got a very large number of amendments of which notice has been given.

Shri Gokulbhai D. Bhatt (Eastern Rajputana States Group): *[Mr. President Thursday was the last day for submitting amendments to the rules framed by the Union Powers Committee. But now that you have fixed the order of business, you could kindly extend the time for submitting amendments to the Report of the Union Powers Committee]*

Mr. President: *[I informed the House yesterday that the time had already expired.]*

Prof. Shibban Lal Saxena (United Provinces: General): Sir, in Part III of the Memorandum on the Union Constitution, it is stated.

“Here enumerate the Fundamental rights and principles of State policy as passed by the Constituent Assembly.”

But, Sir, some of us have given notice of amendments to these Fundamental Rights and Principles of State Policy. I have in particular an amendment to add a fresh clause to the Fundamental Rights and Principles of State Policy, saying that “Slaughter of Cows shall be forbidden in Bharatvarsha by law.” I would like to know when I shall have the opportunity to move that amendment.

The Honourable Sir. N. Gopalaswami Ayyangar (Madras: General): The clauses relating to the Fundamental Rights were discussed in this Assembly and so far as putting them into the draft text of the Constitution is concerned, these clauses were passed at a previous session. The Member who has just spoken has asked when he and others who have given notice of amendments to the clauses relating to Fundamental Rights will have the opportunity of moving such amendments so that the House might consider them. I think, the proper time for moving all such amendments is when the draft text of the Constitution incorporating the Fundamental Rights is taken up for consideration at the final session of this Assembly. I think Pandit Jawaharlal Nehru made the position perfectly clear. He said that when that draft text was brought before the House members would be free to move amendments not only to the wording of the draft, but also to the substance of the draft.

Mr. President: I think that makes the position perfectly clear. It was made clear by Pandit Jawaharlal Nehru also. The amendments to the Draft Constitution, dealing with the Fundamental Rights can be moved at the final session.

An Honourable Member: We have not approved of all the clauses in Fundamental Rights.

Mr. President: We shall deal with them when they come up? Amendment No. 61 on the Order Paper—Shri Vijayavargiya.

Shri Gopi Krishna Vijayavargiya (Gwalior State): *[Mr. President. I do not want to press my amendment because of the views expressed here, after I had moved my amendment. But there are many things to which I consider it necessary to draw your attention. This Section deals with the method of election of the Head of the Federation. According to the amendment, all the units of the States will participate in the election of the President. But the States Legislatures are very faked-up and crude. They will affect the result of the election. Therefore, I moved an amendment that the Union President should be elected directly on the basis of adult franchise, so that the people—even the poor ones—may have the opportunity of exercising their votes for the election of the President. Now I do not want to press my amendment in view of the opinions expressed

*[]*English translation of Hindustani speech.

here. I would say only this much that there will be no uniformity among those Who will elect the President, because on the one hand the elected members of the provincial legislatures will take part in the Presidential election and on the other hand, the members of the State Legislatures which are irregularly constituted. This will be grotesque. The States have only parodies of legislatures. They have nominated members, landed aristocracy and other representing special interests. So long as there is no democracy in the States, there is great danger for our Federation. The States representatives will take part in the election of the President. There may be many other dangers too. Having all these in view, I deem it desirable that the States representatives should be properly elected and necessary safeguards should be incorporated whereby the nominated members, jagirdars and others belonging to special interests in the States legislatures, may not be allowed to vote for the election of the President.

Federation is going to be established in our country but as yet. we do not know if all the States will join the Indian Union and what attitude they will adopt towards it. We do not know as to how the participating States will affect the Union. I represent the States people and I think it necessary to incorporate some measures as safeguards against possible dangers. The danger is real. The elected members of the States Legislatures will seriously affect the result of the election of the Union President. Many States ministers are bringing various amendments seeking to secure more favours for the Princes in the draft constitution. This is not in the interest of the people. I desire that the Union President should be directly elected on the basis of adult franchise. This would satisfy the people the States. Even the poor ones will have the right to vote for the election of the President. However, this method is not going to be adopted and for various reasons I do not want to press my amendment. But I wish to point out that in view of the conditions prevailing in the States, we must be cautious about the intended amendment from the States ministers. I do not move my amendment.]*

(Messrs. A. K. Ghosh and S. Nijalingappa did not move their amendments—Nos. 62 and 63.)

Mr. H. V. Kamath (C. P. and Berar : General): I am told that the Hindi equivalent of 'President' will be decided upon when the Hindi draft of the Constitution comes up for discussion. Therefore I do not wish to press this amendment (No. 64) at this stage.

(Shri Balkrishna Sharma did not move his amendment—No. 65)

Shri Gokulbhai D. Bhatt: *[Mr. President, the amendment I wanted to move was in connection with the word, 'Rashtrapati' or the President. He should be named as 'Rashtrapati' or 'Neta' or 'Karandhar'. But I am told that this will be decided after the report of the Committee set up for this purpose has been submitted. Therefore. I do not move my amendment.]*

(Messrs. M. Ananthasayanam Ayyangar, Mohanlal Saksena, B. M. Gupte and Jadubans Sahai did not move their amendments—Nos. 67, 68, 69 and 70).

Shri K. Santhanam (Madras: General): It was suggested by Pandit Nehru that we might begin with Part IV.

*[]*English translation of Hindustani speech.

Mr. President: Yes, we have taken up Part IV and we are on Clause I.

Shri S. Nagappa (Madras: General): We are awaiting the Minorities Report and I do not therefore intend to move this amendment No. 71 at this stage.

Mr. T. Channiah (Mysore State): Mr. President, Sir, I move the following amendment, namely:

“That in sub-clause (1) of Clause 1 after the word ‘elected’ the words ‘by rotation either by the North of India or South of India’ be inserted.”

Sir, why I have suggested this system of election to the Presidentship of the Federation is due to the following reasons: The election of a President to the Federation by rotation either by the North of India or by the South of India gives a fair representation and satisfaction to the people of India who stand geographically divided into two distinct divisions, namely, the South or the North of India. The people in these parts of India have got a distinct culture and methods of thinking and languages of their own, acclimatised to the conditions of those parts. More than anything else, Sir, there is in existence the lack of realisation of the universal brotherhood and due to various reasons each man or woman has got a love of his or her own clan and does not realise to the extent possible the interests and rights of other people who are equally entitled to such rights or privileges. Such people are struggling hard to put forth their claims that their man should be elected as the President of the Federation, totally unmindful of the realisation of the universal brotherhood.

Secondly, Sir, the next feeling that comes and predominates in most of the people is this, namely, our man, our home, our State or our province, or does the President belong to North of India or does he belong to South of India and so on. So, Sir, we see how the people are forced to think under various circumstances and that broadmindedness limits itself to think in a selfish way.

Mr. H. V. Kamath: On a point of order, Sir. Can an Honourable Member read forth a manuscript speech?

Mr. T. Channiah: Again, Sir, let us take for instance, the existence or predominance of any one majority party in India. Such an organisation tries to put a man of its own as the President of the Federation and never allowing any other smaller organisation to take its chance. Granting that any smaller organisation takes its chance, there will be a sort of feeling in the minds of the bigger Organisation that it should try to overcome the difficulty at the earliest opportunity.

There is again, Sir, the problem of the existence of innumerable castes in India. One community struggles to get over the other and at every stage each Community tries to get power and recognition in the administration of every Government. That is but natural.

Apart from these, Sir, there will be great discontent among the minorities like the depressed classes and Muslims, when their claims are overlooked and when their very existence is not felt sufficiently either in the administration of the country or when their claim for Presidentship is not contemplated at all.

Just as we have got the love of clan in India, so also we have been observing by experience the North Indian employee in North India will look down upon a person coming from South India and *vice versa*. So, Sir, under these circumstances we see that

each one of us is struggling for some power or other in the administration of the country. When once the power is attained by some people the interest and care on the part of the person so chosen to that high power naturally neglect the interests of the other people and in the ultimate scramble for power, we the common men would have really lost the very democratic principles for which every common man is aiming to enjoy.

So, in order to create harmony of feeling among the people of India and for the proper justification of the President to be elected for the Federation, it is quite necessary to adopt the system of the election of the President to the Federation by rotation either from the North of India or South of India.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

“That in sub-clause (1) of Clause 1, for the words ‘as Provided below’ the words ‘in the manner set out below’ be substituted.”

I may explain that this is only a drafting amendment. It is merely a restatement of the text in different words. With these few words I beg to move my amendment.

(Amendment Nos. 74 to 84 were not moved.)

Rai Bahadur Syamanandan Sahaya (Bihar: General): I beg to move:

“That in paragraph (b) of sub-clause (2) of Clause 1, the words ‘or where a Legislature is bicameral the members of the Lower House thereof be deleted.’”

Sir, Clause 1 lays down the procedure for the election of the President. It says that the election shall be by an electoral college consisting of (a) the members of both Houses of the Parliament of the Federation, and (b) the members of the Legislatures of all the Units or, where a Legislature is bicameral, the members of the Lower House thereof. It will be seen. Sir, that in the election of the President, the members of the Upper House are being excluded from taking part. I would submit in this connection that, as this House has decided that the Provinces have the option of having a second Chamber, it does not look graceful that we should exclude the members of such Upper Houses, who will be there by election, from taking part in the election of the President. In fact, if members of the second Chambers are considered unsuitable for taking part even in the election of the President of the Indian Federation, why have second Chambers at all? In your wisdom, of in the wisdom, of the Home it has been decided that second Chambers will find a place in the Constitution of the Provinces subject, of course, to the expressed desire of the Province concerned. That being so, I think it is only fair that the member of the Upper House or the second Chambers, as you may be pleased, should be allowed to vote in the Presidential election. That such second Chambers are needed has been accepted in the Union Constitution, because at the Centre you have provided for a second Chamber. Second Chambers have now been existing in different Provinces and functioning for some time and I do not think I shall be contradicted by anybody if I state that if anything, they the second Chambers, have served a useful purpose by pointing out to the lower House errors and omissions in the legislation coming up before them from the Lower House. In most cases I believe the suggestions of the Upper House have been accepted by the Lower House. I can say this from the experience I have of my own province of Bihar. There appears to be a fear, I suppose, in the minds of those who desire to debar the members of the Upper House from taking part in the election of the President. That fear emanates from the fact that the representatives in the second chambers generally belong to the propertied classes. In the first instance, I do not see why this House should

[Rai Bahadur Syamanandan Sahaya]

decide that propertied classes should be debarred from taking part in the election of the President. For the election of the Governors in the Provinces, we have already decided that it should be by adult franchise, and that every person whether he is a propertied person or otherwise, will be entitled to take part in the election. Why then the distinction in the Presidential election?

We have not yet laid down the franchise for election to the second Chamber. It is open to this House to lay down such a franchise that the Upper Chamber will not merely be representative of the propertied classes of this country. We may lay down the franchise in such a way that men of experience in different walks of life in this country, in industry, business, administration, public life etc.,—may hold a good proportion of the membership of the second Chamber. I am sure it will be conceded that the opinion of such representatives who will be men of experience should be taken in such an important matter as the Presidential election and nothing should be done by which we deprive ourselves of the views that those representatives in the second Chamber may have. There is another aspect to the question also. From all the amendments which members have tabled to the provision for election of the President, it will be clear to you, Sir, that there is a large section of this House which desired that the election of the President should be by adult franchise. Now, if that is not possible Sir, I say that as many people as possible should be enabled to express their opinion in the matter of the election of the President. We were not able to accept adult franchise on account of practical difficulties perhaps, but we should not further narrow down the circle and debar elected representatives of a section of the Provincial Legislature, constituted under the constitution framed by us from taking part in the election of the President. Considering how many important works we have to undertake and the rather difficult position in which this country may be placed in the future. I think it would be unwise to debar men of experience from taking part in important business of the country, especially in the matter of the election of President where in principle it will be agreed that it should be the right of every citizen to take part. I would suggest to the Honourable the Mover that this limitation on the members of the Upper House should be removed and that they should be permitted to take part in the election of the President.

There is another matter also which requires consideration by this House. In the note appended to sub-clause (2), it is laid down that:

“The provision about weighting of the votes according to the population of the Units is necessary to prevent the swamping of the votes of a large Unit by those of a much smaller Unit which may happen to have a relatively large Legislature. The mode of weighting may be illustrated thus. In a Legislature where each Legislature represents one lakh (100,000) of the population, his vote shall count as equivalent to 100, that is 1 for each 1000 of the population; and where the Legislature is such that the Legislator represents 10,000 of the population, his vote shall count as equivalent to 10 on the same scale.”

Suppose in a province under this arrangements the members of the Lower House of the Legislature of that province have 1/10th of the vote of the members of the Legislature of another province, if the members of the Upper Chamber of the former province do not vote, then to the extent that the Upper Chamber represents the people that province suffers. By debarring the members of the Upper House from taking part in the election of the President, we will be debarring some provinces from exercising their full voice based on the total population of the province.

Sir, I have nothing more to say. I hope this suggestion of mine will appeal to the Honourable the Mover.

Mr. K. Chengalaraya Reddy (Mysore State): Mr. President, Sir, I beg to move the following amendment that in sub-clause (2) (b) of Clause 1, for the words “the members” wherever they occur, the words “the elected members” be substituted. The amended clause will read as follows:

“The elected members of the Legislatures of all the Units or, where a Legislature is bicameral, the elected members of the Lower House thereof.”

Sir, it will be seen that the President of the Union is not going to be elected on the basis of adult franchise directly but by an electoral college. There has been a fairly decent amount of opinion in favour of the President of the Union being elected on adult franchise, but since the whole constitution is based on the Ministerial type of Government rather than the Presidential type, it is as well that we should elect our President by an electoral college. Now, Sir, the electoral college that is contemplated in this sub-clause is divided into two sections; clause (a) covers the members of both Houses of Parliament of the Federation. Regarding that, there can possibly be no objection. Then comes clause (b) which covers the members of the Legislatures of all the Units. I have no difficulty in accepting it so far as the Provincial Legislatures are concerned because in the Provincial Legislatures in the Lower House all the representatives are elected on the basis of adult franchise. My difficulty is with regard to the States Legislatures. So far as the States Legislatures are concerned, it will be readily conceded that the Constitution of the States Legislatures will not be on a uniform basis. The various States Units will have different kinds of Constitutions according to the various stages of evolution that they may have arrived at. Since I contemplate that some of the States Legislatures may have nominated representatives, I want to restrict the voting power to the elected members only. It may be argued that by moving this amendment, we are assuming and agreeing by implication to the existence of nominated members in the States Legislatures.

I do not think, Sir, that would be the result, because I for my part will say that this amendment, if it is accepted, would be an incentive to the Unit Legislatures of the particular States concerned to do away with nomination and to provide for election right through in the Constitution. If some minorities which are being now nominated to the State Legislatures are not given the right to participate in the election of the President of the Federation, it is very likely that such minorities or any other interests may ask for election instead of nomination, so that their representatives may have the valuable right of participating in the election of the President of the Federation. So, Sir, views from any point of view I trust this amendment would be acceptable to the House. It is looked forward to by some that before the Constitution is actually completed the State Unit Constitutions may be so drawn up as not provide for any nominated members in their Legislatures. If that happens, I will welcome it. In that case it would be time enough when drafting the Constitution to omit this particular differentiation which has been contemplated by my amendment. For the present, Sir, I move this amendment and hope that it will be accepted by the House.

Shri Gokulbhai D. Bhatt: * [Mr. President, mine is an amendment to the amendment of Mr. K. C. Reddy. His amendment reads:—

“The elected members of the legislatures.....”

* [English translation of Hindustani speech begins.

[Shri Gokulbhai D. Bhatt]

I want that the word 'territorially' should be put before the word, 'elected members' and it should read:—

“The territorially elected mmebers.... of the legislature.....”

The reason for my amendment is this. There are special constituencies from which the members are elected. The elected members from special constituencies cannot be considered as real representatives of the people. But I thought that this might be further restricted.

I want to draw your particular attention to this point—that the elected members must be genuine representatives of the constituencies which they represent. I do not want to press this amendment any further. I want to draw your attention to the fact that as most of the elected members representing the special Constituencies are *Zagirdars* and *Zamindars*, they should not be considered as genuine representatives of the people.]*

(Messrs. Biswanath Das, R. R. Diwakar, Yudhisthir Mishra and Jai Narayan Vyas did not move their amendments).

Prof. Shibbanlal Saxena (United Provinces: General) *[Sir, my amendment is that for sub-clauses (2) and (3) of Clause 1, the following may be substituted:

“The Rastrapati shall be elected directly by the people on the basis of adult suffrage.

This is a very serious matter and I deeply feel that the scheme that we have accepted in the provincial constitution in regard to the election of Governors, should be adopted in the Union Constitution as well. In the provincial constitution we have decided to elect the Governor on the basis of adult suffrage. Shortly before we heard the forceful speeches of Pandit Pant and Mr. Kher, and in the end Sardar Patel accepted Mr. Munshi's amendment which lays down that a Governor elected on the basis of adult suffrage will have some special powers which he will use in times of crisis. It is clear from this, that Mr. Patel and this Constituent Assembly recognise what moral strength the Governors, elected on the basis of adult suffrage, will have and what will be its advantage. In the same way, I think, the “Rashtrapati” should also be elected for adult suffrage.

It is certain that a person elected by twelve to thirteen crores of voters of the country, will have incomparable moral strength and dignity. He will be a man of the people and their true representative. Besides, in my opinion, for fulfilling our pledge for re-establishing unity in our country, which is broken up today and may be further broken up in view of the present efforts of some States, the election of the 'Rashtrapati' by adult suffrage will be very helpful. Then, even the poorest person in every part of the country from Travancore to Kashmir and from Calcutta to Bombay, will feel that he has the right of electing the President. He will then fully realise the dignity of an Indian and thus the roots of Indian unity will get stronger and stronger and the feeling of seceding from India, which is at present noticed in Hyderabad, Kashmir and Travancore will no more exist in the country. Even the people of those parts, which have seceded from India, will have a strong desire of reuniting with India. Therefore in the present circumstances particularly, I think that the election of the 'Rashrapati' on the basis of adult franchise is very necessary and will prove to be very useful.

*[English translation of Hindustani speech begins.

This is also the “national genius” of our country. We are hero-worshippers. By having an austere man and a genius as ‘Rashtrapati’ our country will make speedy progress. A ‘Rashtrapati’ elected by twelve to thirteen crores of voters will be a genius and will command moral support. With a population of 35 crores, we will be the greatest independent nation in the world. A ‘Rashtrapati’ elected by twelve or thirteen crores of voters will enjoy unique moral prestige in the world. His individuality and moral strength will be very helpful to the country in the field of international politics. It will also appease the sentiment of hero-worship of the people of our country.

Today Mahatma Gandhi is the father of our nation even though he has not been elected to be so. All of us call him ‘Bapu’. He is like a permanent president of our nation. An elected Rashtrapati will reach his position to some extent only if he is elected by twelve or thirteen crores of voters as their ‘Rashtrapati’. He will thereby gain great moral prestige and honour and even though he may be aloof from every day work, he will benefit the country a good deal.

The draft constitution before us is an admixture of two constitutions. One of them is the American Constitution under which the President is directly elected on the basis of adult franchise. The other is the British Constitution under which the Prime Minister is the leader of the majority party in the parliament. But in England too, there is a King who has great dignity and the people respect him more than any Prime Minister. Under the constitution he is not free to take any action independently but he plays a useful part in improving the administration. The ‘Rashtrapati’ in our constitution will fulfil the purpose served by the British King. I know that many of our leaders are not in its favour and they will oppose it. They say that when we have accepted a parliamentary form of government, we would like to have a constitution in which the leaders elected by the Assembly and the Legislature will represent the whole nation and will have the responsibility of its administration and therefore to talk of the election of the ‘Rashtrapati’ on the basis of adult suffrage will be a sheer waste of time and will create unnecessary confusion. I do not agree with this. In my opinion, the party which will triumph in the presidential election in the country, will be in a majority in the Legislature and will possibly command a majority in the federal Legislature also.

For example, we elect Babu Rajendra Parsad, the President of the Constituent Assembly, as our president and Sardar Patel or Pandit Jawaharlal as premier. These two leaders will help and co-operate with each other. They will not be at loggerheads against each other. Pandit Pant while just now supporting another motion asked as to what will happen if the President dies. I say that if the President is not there, we will have the Prime Minister. His ministry can function and immediately conduct a second presidential election. In such an eventuality as we find in Burma, where the Prime Minister and his ministers have been murdered, the ‘Rashtrapati’ can manage the administration of the country and form another ministry. I say that the election of the ‘Rashtrapati’ will enhance the prestige of the country. Even though we do not give him powers, he will have his special influence on the administration by virtue of his position. Mahatma Gandhi is not even a *four anna* member of the Congress but everyone knows that every action in the country is taken on his advice. He is the architect of the present free India. I hold that the presidential election will be beneficial to us in every way but as I am not free in the matter, I do not press this amendment.] *

*]English translation of Hindustani speech ends.

Mr. D. H. Chandrasekharaiya (Mysore State): Mr. President, Sir, the amendment that stands in my name runs as follows:

That the following new sub-clause be added after sub-clause (3) of Clause 1 (3A):—

“The President shall be alternately elected from the State and the Non-State Units.”

You know, Sir, that the President of the Federation is proposed to be elected through an electoral college consisting of the members of the two Houses of the Federation, and the members of the Legislatures of the units of the Federation. From this it is evident that the members from the States will not be in a position to successfully contest the elections by putting forward a candidate of their own for the Presidentship at any time because the members from the non-State Units will form an overwhelming majority of the electorates.

The population of the States is nearly 91 millions. That is to say, it forms nearly one-third of the population of the provinces forming the Indian Union and nearly more than four times the population of the Pakistan Units. The States representatives to the two Houses of the Federal Parliament, though forming a minority yet constitute an important part. So far as the Council of States is concerned, 71 members are contributed by the States alone out of a total of 287 members of that body. Similarly, the House of the Peoples which is formed on the population basis, will contain an appreciable number from the State Units. In these circumstances, it would be just and proper that the State Units should be given a chance to put up their own candidate for the Presidentship exclusively for every second term. If that is considered to be a somewhat extravagant demand it may be provided that at least for every third term, the States may put forward their own candidate for Presidentship.

You know, Sir, the States form an important element in the life of the country. After the 15th August, the States too will attain a status of independence just as other elements are going to do. But I for one would wish that the States, whether big or small, will not remain aloof and isolated. They must join hands with the Indian Dominion now and with the Indian Federation or Indian Union after the Constitution is framed. For this purpose a certain amount of goodwill and accommodation towards the States is very necessary. I believe that a provision of the kind proposed in this amendment will go some way towards establishing that happy relationship between the States and the non-State elements of our country. With these words, I commend this amendment for the kind consideration and acceptance of this House.

Mr. President: There is another amendment in your name.

Mr. D. H. Chandrasekharaiya: The next amendment which I am proposing reads as follows:

“That the following new sub-clause be inserted after sub-clause (4) of Clause 1:

“(5) Provision should be made for the President to take the oath of office as in the Constitution of U.S.A.”

One of the most important responsibilities cast on the President of the Federation is that he should preserve the Constitution and protect it from being violated. For any violation of the Constitution, he is removable from his office through impeachment. On account of that it would be necessary and proper that the President should give undertaking

in terms, of an oath to that effect. Almost all Constitutions, especially Federal Constitution provide that an oath should be taken by the head of the Executive. For instance, in the United States of America, the President of the Federation takes an oath of allegiance before he enters on his duties, in the following words:

“I do solemnly swear and affirm that I will faithfully execute the office of the President of the United States and will to the best of my ability preserve, protect and defend the Constitution of the United States.”

The Irish Constitution has a similar provision in its Constitution and it is to this effect:

The President shall enter upon his Office by subscribing public in the presence of members of both Houses of the National Parliament and Judges of the Supreme Court and the High Court and other public personages the following Declaration:

“In the presence of Almighty God I do solemnly and sincerely promise and declare that I will fulfil my duties faithfully and conscientiously in accordance with the Constitution and law and that I will dedicate my abilities to the service and welfare of the people of Ireland. May God direct and sustain me.”

Any one of these forms will do for our own Constitution and the President of the Federation should also take a similar oath before he takes up his duties.

I therefore commend this amendment to the kind consideration and approval of this House.

Mr. President: It is 1 O’Clock now. So the House will adjourn till 10 O’Clock tomorrow.

The Assembly then adjourned till Ten of the Clock, on Thursday, the 24th July, 1947.
